

## **§ 580.15**

other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

### **§ 580.15 Responsibility of the Office of Administrative Law Judges for the administrative record.**

Upon receipt of a petition seeking review of the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall promptly forward a copy of the complete hearing record to the Secretary.

### **§ 580.16 Final decision of the Secretary.**

The Secretary's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

### **§ 580.17 Retention of official record.**

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

### **§ 580.18 Collection and recovery of penalty.**

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Secretary pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of Wage and Hour Division. Such remittance shall be delivered or mailed to the Regional Office, Wage and Hour Division, for the area in which the violations for which the penalty was assessed occurred.

(b) Pursuant to section 16(e) of the Act, the amount of the penalty, finally

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determined as provided in § 580.5, § 580.12 or § 580.16, may be:

(1) Deducted from any sums owing by the United States to the person charged. To effect this, any agency having sums owing from the United States to such person shall, on the request of the Secretary, withhold the specific amount of the penalty from the sums owed to the person so charged and remit the amount to the Secretary to satisfy the amount of the penalty assessed;

(2) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor. When the person against whom a final determination assessing a civil money penalty has been made does not voluntarily remit the amount of such penalty to the Secretary within a reasonable time after notification to do so, the Solicitor of Labor may institute such an action to recover the amount of the penalty; or

(3) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary. Any such unlawful act or practice may be enjoined by the United States district courts under section 17 upon court action, filed by the Secretary; and failure of the person so enjoined to comply with the court order may subject such person to contempt proceedings. A willful violation of section 6, 7, or 12 of the Act may subject the offender to the penalties provided in section 16(a) of the Act, enforced by the Department of Justice in criminal proceedings in the United States courts. In any of the foregoing civil or criminal proceedings, the court may order the payment to the Secretary of the civil penalty finally assessed by the Secretary.

## **PART 697—INDUSTRIES IN AMERICAN SAMOA**

Sec.

697.1 Wage rates and industry definitions.

697.2 Industry wage rates and effective dates.

697.3 Notices.

697.4 Effective dates.

## Wage and Hour Division, Labor

## § 697.1

AUTHORITY: 29 U.S.C. 205, 206, 208.

### § 697.1 Industry definitions.

(a) *Government employees.* This industry includes all activities of employees of the Government of American Samoa. This industry does not include any employees of the United States or its agencies.

(b) *Fish canning and processing.* This industry shall include the canning, freezing, preserving, and other processing of any kind of fish, shellfish, and other aquatic forms of animal life, the manufacture of any by-product thereof, and the manufacture of cans and related activities.

(c) *Petroleum marketing.* This industry shall include the wholesale marketing and distribution of gasoline, kerosene, lubricating oils, diesel and marine fuels, and other petroleum products, bunkering operations in connection therewith, and repair and maintenance of petroleum storage facilities.

(d) *Shipping and transportation.* This industry shall include the transportation of passengers and cargo by water or by air, and all activities in connection therewith, including storage and lighterage operations: *Provided, however,* that this industry shall not include the operation of tourist bureaus and of travel and ticket agencies. *Provided, further,* that this industry shall not include bunkering of petroleum products or activities engaged in by seamen on American vessels which are documented or numbered under the laws of the United States, which operate exclusively between points in the Samoan Islands, and which are not in excess of 350 tons net capacity. Within this industry there shall be three classifications:

(1) *Classification A: Stevedoring, lighterage and maritime shipping agency activities.* This classification shall include all employees of employers who engage in each of the following three services: stevedoring, lighterage and maritime shipping agency activities.

(2) *Classification B: Unloading of fish.* This classification shall include the unloading of raw and/or frozen fish from vessels.

(3) *Classification C: All other activities.* This classification shall include all

other activities in the shipping and transportation industry.

(e) *Construction.* This industry shall include all construction, reconstruction, structural renovation and demolition, on public or private account, of buildings, housing, highways and streets, catchments, dams, and any other structure.

(f) *Retailing, wholesaling and warehousing.* This industry includes all activities in connection with the selling of goods or services at retail, including the operation of retail stores and other retail establishments, the wholesaling and warehousing and other distribution of commodities including but without limitation the wholesaling, warehousing and other distribution activities of jobbers, importers and exporters, manufacturers' sales branches and sales offices engaged in the distribution of products manufactured outside of American Samoa, industrial distributors, mail order establishments, brokers and agents, and public warehouses: *Provided, however,* that this industry shall not include retailing and wholesaling activities included within other industry wage orders which are applicable in American Samoa.

(g) *Bottling, brewing and dairy products.* The bottling, brewing and dairy products industry includes the bottling, sale and distribution of malt beverages and soft drinks in bottles and other containers and the processing or recombining of fluid milk and cream for wholesale and retail distribution and the manufacture of malt beverages, butter, natural and processed cheese, condensed and evaporated milk, malted milk, ice cream and frozen desserts; including also any warehousing operation incidental to the above activities of firms engaged in these activities.

(h) *Printing.* The printing industry is that industry which is engaged in printing, job printing, and duplicating. This industry shall not include printing performed by an employer who publishes a newspaper, magazine, or similar publications.

(i) *Publishing.* This industry is that industry which is engaged in the publishing of newspapers, magazines, or similar publications other than the

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publishing of a weekly, semiweekly or daily newspaper with a circulation of less than 4,000, the major part of which circulation is within the county or counties contiguous thereto.

(j) *Finance and insurance.* The finance and insurance industry includes all banks (whether privately or government owned in whole or in part) and trust companies, credit agencies other than banks, holding companies, other investment companies, collection agencies, brokers and dealers in securities and commodity contracts, as well as carriers of all types of insurance, and insurance agents and brokers.

(k) *Ship maintenance.* This industry is defined as all work activity associated with ship repair and maintenance, including marine, railway, and dry dock operation.

(l) *Hotel.* This industry shall include all activities in connection with the operation of hotels (whether privately or government owned in whole or in part), motels, apartment hotels, and tourist courts engaged in providing lodging, with or without meals, for the general public, including such laundry and cleaning and other activities as are engaged in by a hotel or motel or other lodging facility on its own linens or on garments of its guests.

(m) *Tour and travel services.* This industry shall include the operation of tourist bureaus and of travel and passenger ticket services and agencies: *Provided, however,* that this industry shall not include the operation of a freight-shipping agency.

(n) *Private hospitals and educational institutions.* This industry shall include all activities performed in connection with the operation of private hospitals, nursing homes, and related institutions primarily engaged in the care of the sick, the aged or the mentally or physically disabled or for gifted children, preschools, elementary or secondary schools, or institutions of higher education: *Provided, however,* that this industry shall not include employees of the Government of American Samoa or employees of any agency or corporation of the Government of American Samoa.

(o) *Garment manufacturing.* This industry is defined as the manufacture from any material of articles of ap-

parel and clothing made by knitting, spinning, crocheting, cutting, sewing, embroidering, dyeing, or any other processes and includes but is not limited to all the following clothing: men's, women's, and children's suits, clothing and other products; hosiery; gloves and mittens; sweaters and other outerwear; swimwear; leather, leather goods, and related products; handkerchief, scarf, and art linen products; shirts; blouses; and underwear; uniforms and work clothing; and includes assembling, tagging, ironing, and packing apparel for shipping. This industry does not include manufacturing, processing or mending of apparel in retail or service establishments, including clothing stores, laundries, and other stores.

(p) *Miscellaneous activities.* This industry shall include every activity not included in any other industry defined herein.

[66 FR 44968, Aug. 27, 2001]

### § 697.2 Industry wage rates and effective dates.

Every employer shall pay to each of his employees in American Samoa, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in any enterprise engaged in commerce or in the production of goods for commerce, as these terms are defined in section 3 of the Fair Labor Standards Act of 1938, wages at a rate not less than the minimum rate prescribed in this section for the industries and classifications in which such employee is engaged.

Effective date: Oct. 1, 2003

#### INDUSTRY

- (a) Government Employees—\$2.77
- (b) Fish Canning and Processing—\$3.26
- (c) Petroleum Marketing—\$3.85
- (d) Shipping and Transportation:
  - (1) Classification A—\$4.09
  - (2) Classification B—\$3.92
  - (3) Classification C—\$3.88
- (e) Construction—\$3.60
- (f) Retailing, Wholesaling, and Warehousing—\$3.10
- (g) Bottling, Brewing, and Dairy Products—\$3.19
- (h) Printing—\$3.50
- (i) Publishing—\$3.63
- (j) Finance and Insurance—\$3.99
- (k) Ship Maintenance—\$3.34

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- (l) Hotel—\$2.86
- (m) Tour and Travel Services—\$3.31
- (n) Private Hospitals and Educational Institutions—\$3.33
- (o) Garment Manufacturing—\$2.68
- (p) Miscellaneous Activities—\$2.57

[68 FR 46950, Aug. 7, 2003]

### **§697.3 Notices.**

Every employer subject to the provisions of §697.2 shall post in a conspicuous place in each department of his establishment where employees subject to the provisions of §697.2 are working such notices of this part as

shall be prescribed from time to time by the Administrator of the Wage and Hour Division of the U.S. Department of Labor, and shall give such other notice as the Administrator may prescribe.

[41 FR 24121, June 15, 1976. Redesignated and amended at 66 FR 44969, Aug. 27, 2001]

### **§697.4 Effective dates.**

The wage rates specified in §697.2 are effective on October 1, 2003.

[68 FR 46951, Aug. 7, 2003]